IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1,349

PETER D. SCHWEITZER, LARRY F. GROTH, NAOMI D. PELLEY, RONALD R. PELLEY, ROGER J. MORRIS, HENRY BERGHOFF, ALBERT M. FLUCKEY, KRISANN K. FLUCKEY, ELDRIDGE H. RAVEN, MAUREEN MINEHART, and JUDITH BERRY,
Petitioners,

v.

CLERK FOR THE CITY OF PLYMOUTH and ELECTION COMMISSION FOR THE CITY OF PLYMOUTH,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF IN OPPOSITION FOR RESPONDENTS CLERK FOR THE CITY OF PLYMOUTH AND ELECTION COMMISSION FOR THE CITY OF PLYMOUTH

This brief in opposition is filed on behalf of Respondents, Clerk for the City of Plymouth and Election Commission for the City of Plymouth.

The decision of the Michigan Supreme Court is in conflict with no decision by this Court, nor any other federal court. The issue of the Charter provision of the City of Plymouth requiring ownership of property as a qualification for local elective office does not involve any collateral issue of discrimination as to race or religion, nor is the right of free speech involved. The issue concerns itself solely with the question of whether the equal protection clause of the Fourteenth Amendment of the Constitution of the United States is violated insofar as Petitioners were involved.

The Petitioner, Peter D. Schweitzer, was, however, elected to the City Commission for the City of Plymouth and served in that capacity, but resigned his office on January 20, 1969, prior to the Michigan Supreme Court ruling, which was entered on February 3, 1969.

The issue has now, therefore, become moot.

OPINIONS BELOW

The opinion of the Circuit Court of Wayne County is unreported and is printed in Petitioners' Appendix C. The opinion of the Supreme Court of Michigan has not yet been officially reported, but is unofficially reported in 164 N.W. 2d 30, and is printed in Petitioners' Appendix A.

JURISDICTION

The judgment of the Supreme Court of the State of Michigan was entered on February 3, 1969. Petitioner invokes the jurisdiction of this Court under 28 U.C. Code 1257 (3).

QUESTION PRESENTED

Whether the provision in the Charter of the City of Plymouth adopted by the people of the City of Plymouth pursuant to Michigan's "Home Rule Act", (Michigan Public Act 279 of 1909 as Amended) making the ownership of taxable property an eligibility requirement for local elective public office violates the requirements of the equal protection clause of the United States Constitution.

CONSTITUTIONAL PROVISIONS AND CITY CHARTER PROVISIONS INVOLVED

The City Charter provisions are set forth in Petitioners' Appendix D.

STATEMENT

Petitioner, Peter D. Schweitzer, filed nominating petitions with the Defendant, City Clerk for the City of Plymouth, nominating himself for the office of city commission for the City of Plymouth; the City Clerk refused to accept the petition for filing because the petitioner did not own any real or personal property assessed for tax purposes by the city as required by Section 4.4 of the City Charter. The nominating petitions contained the requisite number of signatures and were in all other respects valid. The applicable portion of Section 4.4 of the Charter reads as follows:

> ". . . To be eligible to hold an elective office, a person shall also have been, for a period of two years prior to the date of his election or appointment to office, the owner of property located within and assessed for taxes by the city."

On March 1, 1967, Judge Victor J. Baum of the Wayne County Circuit Court ruled that the property ownership requirement of Section 4.4 of the Plymouth City Charter was unconstitutional (see Petitioners' Appendix C pages 28-54) and a Writ of Mandamus issued directing the Respondents to file the petition and place Schweitzer's name on the ballot.

The Petitioner Schweitzer's name was placed on the ballot and he was elected to the City Commission for the City of Plymouth for a term of four years.

On March 16, 1967, Respondents filed a claim of appeal from the decision of the Circuit Judge to the Michigan Court of Appeals and Petitioners, on April 13, 1967, filed an application for leave for direct appeal in the Michigan Supreme Court. The Supreme Court for the State of Michigan, on July 25, 1967, granted Petitioners' application for leave to appeal to the Michigan Supreme Court prior to decision by the Michigan Court of Appeals.

On January 20, 1969, while serving as City Commissioner for the City of Plymouth, the Petitioner, Peter D. Schweitzer, resigned. The City Clerk certified the resolution of the City Commission accepting the resignation of Commissioner Peter D. Schweitzer and it is included here as Respondents' Appendix A.

On February 3, 1969 the Supreme Court of the State of Michigan reversed the decision of the Circuit Court of Wayne County holding that the questioned Charter provision for the City of Plymouth was constitutional.

Notwithstanding this, the City Commission for the City of Plymouth did, on June 16, 1969, adopt a resolution placing the questioned provision of the City Charter on the ballot to be submitted to the electors of the City of Plymouth at a special election to be held on Monday, September 8, 1969. That resolution and proposition, as certified, are included here as Respondents' Appendix "B".

ARGUMENT

I.

THERE IS NO CONFLICT WITH ANY DECISION BY THE COURT OR ANY LOWER FEDERAL COURT

This issue does not involve, nor has it ever been claimed, that there was any discriminatory aspects of the Charter Provision of the City of Plymouth. No issue of race, religion or free speech has ever been present in this case.

This Court's decisions touching upon the subject of property ownership relative to the equal protection clause of the Fourteenth Amendment have clearly eliminated such qualifications in the exercise of the franchise, but have never related these cases to the qualification for election to local public office. (*Harmon, et al. v. Forssenius, et al.*, 380 U.S. 528; *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed. 2d 169 (1966).)

Thus, "The application of the equal protection clause to qualifications for holding public office as opposed to voting is a step which this Court has not yet taken." (See opinion of the Michigan Supreme Court Appendix A, page 15 of Petitioners' Appendix.)

Petitioner cites *Bond v. Floyd*, 385 U.S. 116, 87 S.Ct. 339, 17 L.Ed. 2d 235 (1966), which involved the issue of freedom of speech and is not applicable here. But in *Bond v. Floyd* this Court clearly upheld qualifications for the holding of local public office.

Merely owning property that is taxable by the municipality is not necessarily related to wealth as a qualification for office. As a matter of fact, people of rather modest

means own property and persons of wealth frequently live in apartments and do not possess the qualifications for office.

II.

THE QUESTION HAS BECOME MOOT

Peter D. Schweitzer's resignation prior to the Michigan Supreme Court's decision has now made this matter moot.

Peter D. Schweitzer and his fellow petitioners no longer will be legally affected by any decision of this Court based upon the issue presented by Petitioners' Writ. A justiciable controversy, therefore, no longer exists.

Additionally, the City Commission for the City of Plymouth will conduct a special election to determine whether the questioned provision of the Charter shall be removed on September 8, 1969. If it is so removed, a further "suggestion of mootness" will be filed with this Court prior to October 1, 1969.

SUMMARY

The factual situation involved is very narrowly confined to the constitutionality of the questioned charter provision of the City of Plymouth, there being no claim of discrimination in the application of said Charter and, as a matter of fact, none ever existed. There is no conflict between the decision of the Michigan Supreme Court and any existing federal court decision.

The question has become moot insofar as Petitioners are concerned and no justiciable controversy now exists. Additionally, the very charter provision here challenged may be removed prior to this Court's October, 1969 term.

CONCLUSION

It is respectfully submitted that the Petition for Writ of Certiorari should be denied.

DRAUGELIS and ASHTON
By: EDWARD DRAUGELIS
Counsel for Respondents
843 Penniman Avenue
Plymouth, Michigan 48170

RESPONDENTS' APPENDIX A

CITY OF PLYMOUTH MICHIGAN

State of Michigan,
County of Wayne—ss.

The undersigned hereby certifies that he is the City Clerk for the City of Plymouth, Michigan, and that as such he is the custodian of the records of the Minutes of meetings of the City Commission and Keeper of the Journal of Proceedings of said City Commission as well as being the custodian of all Ordinances, Resolutions and actions of the City Commission, which record shall be public, and that the document(s) submitted herewith is/are a true and accurate copy of:

Letter of resignation from City Commission of the City of Plymouth, Michigan tendered by Peter D. Schweitzer, 884 Palmer Street, Plymouth, Michigan dated January 13, 1969.

ATTEST:

This 10th day of June, 1969

/s/ Eugene S. Slider,
City Clerk

884 Palmer Street
Plymouth, Michigan 48170

January 13, 1969

Mr. Eugene Slider, Clerk
City of Plymouth
201 South Main Street
Plymouth, Michigan 48170

Dear Gene:

I am extremely sorry that circumstances make it necessary for me to write this letter. Nonetheless, those circumstances do exist and I must, therefore, submit to you this letter of resignation from the Plymouth City Commission.

I have accepted a position at Plymouth State Home which will begin on Monday, January 20. The State of Michigan requires that its employees refrain from involvement in certain political activities. I have been informed that involvement as a City Commissioner falls within that realm and, hence, requires my resignation. That resignation will be effective at the conclusion of the City Commission meeting on January 20.

I have very much enjoyed the opportunity to serve as a Plymouth City Commissioner. If there are other alternative ways in which I may serve, I would appreciate doing so.

Sincerely,

/s/ Peter D. Schweitzer

Rec'd Jan. 13, 1969
E. S. Slider, City Clerk.

RESPONDENTS' APPENDIX B

CERTIFICATION

I, Eugene S. Slider, City Clerk of the City of Plymouth, Michigan, hereby certify that the following is a true and correct copy of a resolution passed by the City Commission at a regular meeting held on Monday, June 16, 1969, the vote being "Yes" 6, "No" 1, the resolution being passed and adopted by 3/5 majority vote. I further certify that the City Commission of the City of Plymouth, Michigan is composed of 7 duly elected and qualified commissioners and that all of said commissioners were present at said meeting of June 16, 1969.

/s/ Eugene S. Slider,
City Clerk

RESOLUTION

The following resolution was offered by Comm. Jabara and supported by Comm. Silvis:

WHEREAS, the City Commission of the City of Plymouth, Michigan, desires to submit to the electors of said City, at a Special City Election, to be held on Sept. 8, 1969, in accordance with the provisions of Section 3.8 of Chapter 3 of the Charter of said City, Section 21 of Act 279 of the Public Acts of 1909, as amended, (Sec. 5.2100 M.S.A., as amended), a proposed amendment relative to Section 4.4 of Chapter 4 of said Charter to allow or permit an elector of the City to hold an elective office without being the owner of property located within and assessed for taxes by the City.

NOW, THEREFORE, BE IT RESOLVED, that the said proposition be submitted to the electors of said City at the aforesaid election upon a ballot in the following form:

OFFICIAL

PROPOSITION TO AMEND CITY CHARTER

BALLOT

CITY OF PLYMOUTH

WAYNE COUNTY, MICHIGAN

SPECIAL CITY ELECTION,

MONDAY, SEPT. 8, 1969

INSTRUCTIONS—To vote in favor of the proposition, make a cross in the square to the left of the word "Yes" and to vote against the proposition, make a cross in the square to the left of the word "No".

PROPOSITION

"Shall Section 4.4 of Chapter 4 of the City Charter be amended to allow or permit an elector of the City to hold an elective office without being the owner of property located within and assessed for taxes by the city.

☐ YES

☐ NO

BE IT FURTHER RESOLVED, that the Clerk shall cause to be published in the Plymouth Mail & Observer, a newspaper published and circulated in said City, at least twice within the 30 days preceding said election, the following notice:

ELECTION NOTICE

Take Notice that at a Special City Election, Monday, Sept. 8, 1969, the following proposed amendment to the Charter of the City of Plymouth, Michigan, will be submitted to the City Electors:

PROPOSITION

The proposed charter amendment of Chapter 4 of said charter reads as follows:

Section 4.4. Except as otherwise provided in this charter, an elector of the City shall be eligible to hold elective or appointive office, if he shall have been a resident of the City for two years immediately prior to the date of his election or appointment to office, and shall not be in default to the City, the County of Wayne, or to any school district located within the City. In the case of appointive officers, the Commision may, by a two-thirds vote, waive the requirement of residence in the City at a time of appointment: Provided, that each person for whom such requirement is waived shall become a resident of the City within one year following his appointment and shall remain a resident of the City during the entire time that he holds office in the City government. Failure so to become a resident of the City and thereafter to be a resident of the City shall create a vacancy in the office to which any such person was appointed.

The existing charter provision of Chapter 4, which would be altered or abrogated by the above and foregoing, reads as follows:

Section 4.4. Except as otherwise provided in this charter, an elector of the City shall be eligible to hold elective or appointive office, if he shall have been a resident of the City for two years immediately prior to the date of his election or appointment to office, and shall not be in default to the City, the County of Wayne, or any school district located within the city. To be eligible to hold an elective office, a person shall also have been, for a period of two years prior to the date of his election or appointment to office, the owner of property located within and assessed for taxes by the City. In the case of appointive officers, the Commission may, by a two-thirds vote, waive the requirement of residence in the City at the time of appointment: Provided, that each person for whom such requirement is waived shall become a resident of the City during the entire time that he shall hold office in the city government. Failure so to become a resident of the City and thereafter to be a resident of the City shall create a vacancy in the office to which any such person was appointed.

BE IT FURTHER RESOLVED, that the Clerk shall cause to be posted in a conspicuous place in each polling place, the aforesaid proposed charter amendment in full.

Be it further resolved, that the Clerk shall submit to the Governor of Michigan, for his approval, the within and foregoing text of said proposition, pursuant to the provisions of Section 21 of Act 279 P.A. 1909, as amended.

Resolution passed and adopted by 3/5 majority vote.